

REMARKS

In the Office Action mailed on January 1, 2006, the Examiner rejected claims 1-5, 11, and 12. The Examiner indicated that claims 6, 7, 9, and 10 are allowable. Applicants thank the Examiner for indicating the allowable subject matter.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-5, 11, and 12 under 35 U.S.C. § 102(b) as anticipated by Sakai et al. (U.S. Patent No. 4,942,877). Applicants do not agree with the Examiner's rejection. However, in view of the Examiner's indication of allowable subject matter, Applicants have amended claims 1 and 11 to clearly place them in condition for allowance. Specifically, Applicants amended claims 1 and 11 to recite a memory storing first and second formulas or algorithms for determining oxygen saturation. Claims 2-5 and 12 depend from independent claims 1 and 11, respectively. Accordingly, Applicants assert that claims 1-5, 11, and 12 are in condition for allowance based on the present amendments.

In view of the arguments and amendments set forth above, Applicants request that the Examiner withdraw the rejection of claims 1-5, 11, and 12. Further, Applicants request that the Examiner provide an indication of allowance for claims 1-5, 11, and 12. It should be noted that Applicants reserve the right to pursue a continuation application directed to the subject matter recited in claims 1 and 11 prior to this amendment.

Double Patenting

The Examiner rejected claim 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,801,797. Applicants attempted to remove this double patenting rejection by filing a terminal disclaimer. However, the terminal disclaimer was not accepted. While Applicants are willing to file the terminal disclaimer again, Applicants assert that the present amendments make the double patenting rejection moot. Indeed, in view of the present amendment to claim 11, which now incorporates the allowable subject matter indicated by the Examiner, Applicants assert that claim 11 is clearly in condition for allowance. Accordingly, Applicants request that the Examiner withdraw the rejection and provide an indication of allowance for claim 11 and the claim depending therefrom.

New Claims

As set forth above, Applicants have added new claims 13-17. These newly added claims include the limitations of the claims the Examiner indicated as allowable. Accordingly, Applicants request that the Examiner provide an indication of allowance for new claims 13-17.

Conclusion

In view of the remarks set forth above, Applicant respectfully requests allowance of claims 1-7 and 9-17. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: April 10, 2006



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